

Claimant argues the ALJ correctly determined the accident occurred on respondent's premises and that she injured her back and legs in the fall. But claimant

further argues she met her burden of proof that she is temporarily and totally disabled. Accordingly, claimant requests the Board to modify the ALJ's Order and award her temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Malinda Halliburton was employed as a full-time phlebotomist for the respondent. Her work site was in the Miller building on the KU Medical Center Campus. On February 19, 2007, claimant walked from the area where she normally parked her car and slipped on ice in the circle drive outside the entrance to the building where she worked. Claimant fell forward, hyperextended her left hand while trying to catch herself and hit her back on the curb.

Claimant testified that her left hand was in the most pain and then as the day progressed she began to hurt all over as if she had been beaten up. Her hand pain had kept her up through the night and the next morning her back, legs and whole body was hurting. Claimant was advised to seek medical treatment at Occupational Health on February 20, 2007. She testified she told the registered nurse, Mary Icenogle, about her back pain.

The determination of whether claimant suffered a compensable injury requires an analysis of whether her slip and fall accident occurred on respondent's premises. The "going and coming" rule contained in K.S.A. 2006 Supp. 44-508(f) provides in pertinent part:

The words 'arising out of and in the course of employment' as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

K.S.A. 2006 Supp. 44-508(f) is a codification of the "going and coming" rule developed by courts in construing workers compensation acts. This is a legislative declaration that there is no causal relationship between an accidental injury and a worker's employment while the worker is on the way to assume the worker's duties or after leaving

those duties, which are not proximately caused by the employer's negligence.¹ In *Thompson*, the Court, while analyzing what risks were causally related to a worker's employment, wrote:

The rationale for the "going and coming" rule is that while on the way to or from work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment.²

But K.S.A. 2006 Supp. 44-508(f) contains exceptions to the "going and coming" rule. First, the "going and coming" rule does not apply if the worker is injured on the employer's premises.³

The ALJ analyzed whether the accident arose on respondent's premises in the following fashion:

KUPI is a business entity that handles all outpatient services performed at KU Medical Center. KUPI employees work at various places throughout the KU Medical Center campus. KU Medical Center doctors may be employed by KUPI, when they perform outpatient services, as well as by the medical center when performing other duties. KUPI and KU Medical Center are not physically separate entities. The premises of KU Medical Center also serve as the premises of KUPI. Since the claimant was injured on the premises of KU Medical Center, she was injured on the premises of KUPI. The claimant's low back/leg injury arose out of and in the course of her employment. The respondent and insurance carrier shall promptly designate to the claimant a qualified authorized physician to evaluate her low back and leg complaints, and to provide medical treatment, if necessary.⁴

Moreover, the respondent's outpatient clinic manager did not know if respondent even leased the building space it used in the Miller Building nor if it leased or paid a fee for use of any of the parking facilities. But he did note that respondent's employees are assessed a parking fee and then the KU Medical Center parking services designates where they will park. Based upon the record compiled to date this Board Member agrees with the ALJ's determination that the premises of KU Medical Center are also respondent's premises.⁵ The ALJ's Order is affirmed.

¹ *Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, 416 P.2d 754 (1966).

² *Thompson v. Law Office of Alan Joseph*, 256 Kan. 36, 46, 883 P.2d 768 (1994).

³ *Id.* at Syl. ¶ 1.

⁴ ALJ Order (Aug. 23, 2007) at 2.

⁵ See *Rinke v. Bank of America*, 282 Kan. 746, 148 P.3d 553 (2006).

Claimant argues that she met her burden of proof to establish that she is entitled to an award of temporary total disability compensation. Respondent argues that the Board does not have jurisdiction over that issue on an appeal from a preliminary hearing. This Board member agrees.

K.S.A. 44-534a restricts the jurisdiction of the Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;
- (4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an ALJ if it is alleged the ALJ exceeded his or her jurisdiction in granting or denying the relief requested.⁶

The issue whether a worker satisfies the definition of being temporarily and totally disabled is not a jurisdictional issue listed in K.S.A. 44-534a(a)(2). Additionally, the issue whether a worker meets the definition of being temporarily and totally disabled is a question of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.⁷

An ALJ has the jurisdiction and authority to grant temporary total disability benefits at a preliminary hearing. Therefore, the ALJ did not exceed his jurisdiction. Accordingly, the Board does not have jurisdiction to address this issue at this juncture of the proceedings.

⁶ See K.S.A. 2006 Supp. 44-551.

⁷ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁸ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.⁹

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Kenneth J. Hursh dated August 23, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of November 2007.

BOARD MEMBER

c: Michael J. Haight, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge

⁸ K.S.A. 44-534a.

⁹ K.S.A. 2006 Supp. 44-555c(k).